



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

MRA/148200

**PRELIMINARY RECITALS**

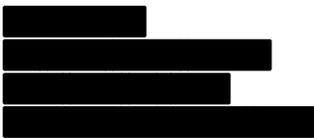
Pursuant to a petition filed March 22, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on July 16, 2013, at Kenosha, Wisconsin. The record was open to permit Petitioner’s representative to submit a budget. She did so.

The issue for determination is whether Petitioner’s community spouse’s income allocation (CSIA) may be increased (thus reducing Petitioner’s patient liability).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Kenosha County. She passed away on April 13, 2013.

2. Petitioner applied for institutional Medicaid in mid-March 2013 with backdating sought to February 1, 2013. Petitioner had a community spouse during the period relevant here. This appeal was filed seeking an increase in the community spouse income allocation.
3. Petitioner's gross income was \$1408.51 at the time of this appeal. Petitioner's community spouse's gross monthly income was \$2304.47 per month. Thus total income was \$3712.98.
4. Petitioner and his community spouse requested this hearing seeking an increase in the CSIA. They were represented at the hearing by their daughter. Her best estimate as to his bills are as follows:

**Bills**

|                        |           |
|------------------------|-----------|
| Bath and med set up    | \$ 640.00 |
| In home care           | \$3888.57 |
| Van ins                | \$ 83.00  |
| Newspaper              | \$ 22.00  |
| Meds                   | \$ 80.68  |
| Toiletries             | \$ 65.00  |
| food                   | \$ 980.00 |
| Cemetery               | \$ 473.00 |
| Mtg. (inc. tx + ins)   | \$ 877.07 |
| WE Energy              | \$ 256.84 |
| Water                  | \$ 58.50  |
| Phone/TV               | \$ 282.30 |
| Van lease              | \$ 425.00 |
| Life ins. (Petitioner) | \$ 107.91 |
| VA                     | \$ 61.80  |

5. These expenses total approximately \$8300 per month.
6. The agency determined that the community spouse income allowance (CSIA) is \$2898.00 and allocated \$593.53 to the community spouse, thereby making the patient liability \$769.98. It is not clear where the \$2898 came from as the maximum allowable by the agency was \$2841 during the time relevant here. *See Medicaid Eligibility Handbook, §18.6.2.* The maximum community spouse income allocation (CSIA) available without a hearing at the time of Petitioner's institutionalization was the lesser of \$2841.00 or \$2521.67 plus shelter costs in excess of \$756.50. As Petitioner's shelter expenses are above \$756.50 (mortgage and taxes alone = \$877) the maximum CSIA can be no more than \$2841.00.

**DISCUSSION**

Medical assistance rules require institutionalized persons to "apply their available income toward the cost of their care." *Wis. Admin. Code § DHS 103.07(1)(d)*. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of an institutionalized person so that she does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. §13964-5*; also see *Medicaid Eligibility Manual (MEH), §18.1*. An institutionalized person may allocate some of his/her income to the community spouse. *MEH, §18.6.1*. The minimum monthly maintenance needs allowance (MMMNA) currently is the lesser of \$2,841 or \$2,521.67 plus excess shelter costs. *Medical Eligibility Handbook (MEH), § 18.6.2*. Excess shelter costs are shelter costs above \$756.50. *Id.*

Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA where the MMMNA is insufficient to meet a particular community spouse's *basic* maintenance needs. *Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); Medicaid Eligibility Handbook 18.6*. However, an increase in the CSIA above the MMMNA can be made through the fair hearing process only if it is

established that the community spouse requires income above the level provided by the MMMNA due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8) (c)*. Further, "... exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs". *Wis. Admin. Code §DHS 103.075(8)(c)*.

Thus the standard to be applied by the Division of Hearings and Appeals in making a determination as to whether the CSIA may be increased is whether leaving the CSIA at the standard limit will result in financial distress for the community spouse such that the community spouse is unable to meet necessary and basic maintenance needs.

Based on this criterion, I have reviewed the expenses noted at Finding # 4. The Division of Hearings and Appeals would not typically allow some of the expenses, e.g., food of \$980 for one person or the cable /phone bill of \$282.30. I do not, however, find it necessary to analyze these expenses that way. This is because the in-home care and mortgage for the community spouse alone total \$ \$4765 (877 + 3888). As this is in excess of the total income of the Petitioner and spouse, all of the institutional spouse income may be allocated to the community spouse for the period from February 1, 2013 through the passing of Petitioner on April 13.

### CONCLUSIONS OF LAW

That the evidence does demonstrate that Petitioner's community spouse is eligible for an increase in the community spouse income allowance for the period from February 1, 2013 through April 13, 2013. The new CSIA is the full amount of both spouses' income.

**NOW, THEREFORE, it is**

### ORDERED

That the matter be remanded to the county agency with instructions to increase the community spouse income allowance for the period from February 1, 2013 through April 13, 2013 to the total of both spouses' income. The county agency must take these steps within 10 days of the date of his Order.

### REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 26th day of August, 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoef, Acting Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 26, 2013.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability